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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ULYSSES DAVIS, JR.,

12 Plaintiff,

13 v.

14 JILL BROWN, et al.,

15 Defendants.
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No. C 05-2337 RMW (PR)

ORDER OF DISMISSAL
WITH LEAVE TO AMEND

18 Plaintiff, a California prisoner currently incarcerated at San Quentin State Prison,
19 filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 concerning the
20 conditions of his confinement at San Quentin. Plaintiff has been granted leave to proceed
21 in forma pauperis in a separate order. On October 4, 2005, plaintiff filed a first amended
22 complaint which includes a proposed temporary restraining order and order to show cause
23 to defendants. The amended complaint also contains documentation of plaintiff's prison
24 administrative appeal and letters concerning plaintiff's claims. However, plaintiff does
25 not set forth any substantive claims in the first amended complaint. Therefore, it is
26 unclear to the court whether plaintiff intends to proceed with the first amended complaint
27 or the substantive claims set forth in his original complaint. Accordingly, the court will
28 dismiss the first amended complaint with leave to amend so that plaintiff may include all

1 of the claims he wishes to present in a second amended complaint, or notify the court that
 2 he intends to proceed with the substantive claims in his original complaint, within thirty
 3 days of the date of this order.

4 DISCUSSION

5 A. Standard of Review

6 Federal courts must engage in a preliminary screening of cases in which prisoners
 7 seek redress from a governmental entity or officer or employee of a governmental entity.
 8 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
 9 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief
 10 may be granted, or seek monetary relief from a defendant who is immune from such
 11 relief. Id. at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. Balistreri v.
 12 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a person
 14 acting under the color of state law committed a violation of a right secured by the
 15 Constitution or laws of the United States. West v. Atkins, 487 U.S. 42, 48 (1988).

16 Liability may be imposed on an individual defendant under section 1983 if the
 17 plaintiff can show that the defendant proximately caused the deprivation of a federally
 18 protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of
 19 Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a
 20 constitutional right within the meaning of section 1983 if he does an affirmative act,
 21 participates in another's affirmative act or omits to perform an act which he is legally
 22 required to do, that causes the deprivation of which the plaintiff complains. Leer, 844
 23 F.2d at 633; Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995). Sweeping
 24 conclusory allegations will not suffice; the plaintiff must instead "set forth specific facts
 25 as to each individual defendant's" deprivation of protected rights. Leer, 844 F.2d at 634.

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1 B. Plaintiff's First Amended Complaint

2 Plaintiff filed a first amended complaint on October 12, 2005. Plaintiff's first
3 amended complaint does not allege any substantive claims, but includes a proposed
4 temporary restraining order and order to show cause to defendants. The first amended
5 complaint also contains documentation of plaintiff's prison administrative appeal and
6 letters regarding plaintiff's complaints concerning the prison conditions. The court will
7 dismiss the first amended complaint with leave to amend so that plaintiff may include all
8 of the claims he wishes to present in a second amended complaint, or notify the court that
9 he intends to proceed with the substantive claims in his original complaint, within thirty
10 days of the date of this order.

11 Plaintiff must allege facts supporting each claim separately in his second amended
12 complaint showing his entitlement to relief from each individual defendant. Plaintiff
13 must be careful to allege specific facts showing the basis for liability for each individual
14 defendant. He should not refer to the defendants as a group, i.e., "the defendants;" rather,
15 he should identify each involved defendant by name and link each of them to a specific
16 claim by explaining what each defendant did or failed to do that caused a violation of his
17 constitutional rights.

18 **CONCLUSION**

19 1. Plaintiff's first amended complaint is hereby DISMISSED with leave to
20 amend as indicated above. Plaintiff shall file a second amended complaint containing all
21 of the substantive claims he wishes to present, or file a notice with the court that he
22 intends to proceed with the substantive claims in his original complaint, **within thirty**
23 **days** from the date this order is filed.

24 2. If plaintiff files a second amended complaint, the second amended
25 complaint must include the caption and civil case number used in this order (C 05-2337
26 RMW (PR)) and the words SECOND AMENDED COMPLAINT on the first page.
27 Because an amended complaint completely replaces the original complaint, plaintiff must
28 include in it all the claims he wishes to present. See Ferdik v. Bonzelet, 963 F.2d 1258,

1 1262 (9th Cir.), cert. denied, 113 S. Ct. 321 (1992). Plaintiff may not incorporate
2 material from the original complaint or first amended complaint, such as supporting
3 documentation of his prison administrative appeal, by reference. Plaintiff must include
4 all documentation and supporting information with the second amended complaint.

5 **Failure to file a notice with the court or a second amended complaint within the**
6 **designated time will result in the dismissal of the first amended complaint without**
7 **prejudice.**

8 3. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
9 court informed of any change of address by filing a separate paper with the clerk headed
10 "Notice of Change of Address." He must comply with the court's orders in a timely
11 fashion or ask for an extension of time to do so. Failure to comply may result in the
12 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

13 IT IS SO ORDERED.

14 DATED: 4/21/2006

15 /s/ Ronald M. Whyte
16 RONALD M. WHYTE
17 United States District Judge
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1 This is to certify that on 5/10/2006, a copy of this
2 ruling was mailed to the following:

3 Ulysses Davis, Jr.
4 K-24524
5 San Quentin State Prison
6 San Quentin, CA 94974
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